This case is illustrative of the strict adherence of the Kentucky court to the highly artificial rule established by the more recent decisions in that state, i. e. that common employment depends solely on identity of departments of work. There are two theories as to what constitutes common employment. The first is that common employment depends solely on whether the delinquent servant's negligence was a risk contemplated by the injured servant when he entered into this employment; and the second is, that common employment depends on whether the two servants were working in the same department or not. The great majority of the courts have adopted the first theory and in these jurisdictions trainmen working on *different* trains have been held to be in the same common employment, and therefore fellow-servants. *Pittsburg, Ft. W. & C. R. Co.* v. *Ruby,* 38 Ind. 294; *Oakes* v. *Mase,* 165 U. S. 363; *Kerlin* v. *Chicago, P. & St. L. R. Co.,* 50 Fed. 185; *Pleasants* v. *Raleigh & A. Air-Line R. Co.,* 121 N. Car. 492; *Michigan C. R. Co.* v. *Dolan,* 32 Mich. 510; *Chicago, St. Louis & N. O. R. Co.* v. *Doyle,* 60 Miss. 977; *Denver & R. G. R. Co.* v. *Sipes,* 23 Colo. 226; *Norfolk & W. R. Co.* v. *Donnelly,* 88 Va. 853; *Healey* v. *New York, N. H. & H. R. R. Co.,* 20 R. I. 136; *Howard* v. *Denver & R. G. R. Co.,* 26 Fed. 837; *Randall* v. *Baltimore & O. R. Co.,* 109 U. S. 478; *Jenkins* v. *Richmond & D. R. Co.,* 39 S. C. 507. Only a few courts have adopted the second theory and perhaps none with such vigor and so unequivocally as those of Kentucky, especially in their later decisions. In the following cases the trainmen handling *different* trains were held *not* to be fellow-servants: *Chicago & Alton R. Co.* v. *House,* 172 Ill. 601; *Chicago City R. Co.* v. *Leach,* 80 Ill. App. 354. (But it is a mixed question of law and fact in Illinois and the relations of the servants to each other should be submitted to a jury under proper instructions.); *Maddus* v. *Chesapeake & Ohio R. Co.,* 28 W. Va. 610. In Kentucky the difference of department alone is sufficient to exclude the defense of common employment, and neither the degree of negligence nor the superiority of rank enter as a material factor, and so the cases, especially the later ones, have consistently held that trainmen on different trains are not fellow-servants. *Louisville C. & L. R. Co.* v. *Cavens* (1873), 9 Bush. 556; *Kentucky C. R. Co.* v. *Ackley* (1888), 87 Ky. 278; *L. & N. R. R. Co.* v. *Hiltner* (1900), 21 Ky. L. Rep. 1826. *The Cincinnati N. O. & T. P. R. Co.* v. *Roberts* (1901), 23 Ky. Law. Rep. 264; *Louisville & N. R. Co.* v. *Edmunds, Admr.* (1901), 23 Ky. Law Rep. 1049.

MORTGAGE.—"CONVEYANCE"—"ASSURANCE."—The defendant gave a first mortgage on his farm in October, which was not recorded until the 28th day of the following May. On the 21st of May, he gave a second mortgage, not reciting therein the former mortgage, which was duly recorded the following day. An indictment was brought under a statute making it a misdemeanor to execute any deed or writing conveying or assuring property which had been previously sold, conveyed, or mortgaged, such deed or writing being outstanding and in force, without describing or reciting such former deed or writing. *Held,* on a motion to quash that a mortgage is not a conveyance or assurance within the meaning of the statute. *State* v. *Rhodes* (1908), — Kan. —, 93 Pac. Rep. 610.

The terms assurance and conveyance are regarded by many as convertible and synonymous terms. *State* v. *Farrand,* 8 N. J. Law 410. And the term conveyance has generally been held to include a mortgage. *Picket* v. *Buckner,* 45 Miss. 226; *Rowell* v. *Williams,* 54 Wis. 639; and, especially, is this true in those states where the legal theory of the mortgage prevails. *Patterson* v. *Jones,* 89 Ala. 388; *People* v. *Roche,* 124 Ill. 15. And in most states where the equitable theory is held. *Decker* v. *Boice,* 83 N. Y. 220; *Burns* v. *Berry,* 42 Mich. 176. In Kansas, it has been held that a mortgage is a conveyance under the pre-emption law. *Brewster* v. *Madden,* 15 Kan. 249. The same has been held under the U. S. bankruptcy statute. *Bingham* v. *Frost,* Fed. Cas. 1413. Also under the married women's acts requiring joinder of the husband in a conveyance. *Babcock* v. *Hoey,* 11 Ia. 375. The term conveyance seems to be used by lawyers habitually and in a popular sense to include any transfer legal or equitable. *Adams* v. *Hopkins,* 144 Cal. 19. The principal case may be upheld, perhaps, on the ground that the statute being penal will be strictly construed in favor of the defendant. *People* v. *Cox,* 45 Cal. 342. *Harral* v. *Leverty,* 50 Conn. 46.

MUNICIPAL CORPORATIONS—INTERURBAN CARS AS AN ADDITIONAL SERVITUDE.—In an action brought by an electric railroad company against a steam railway company to restrain the latter from preventing the former from crossing its tracks, one of the defenses was that the interurban line was an increased servitude on the street and it had no right to cross the defendant's right of way without a grant or condemnation. *Held,* that the use of the streets by the interurban line was not an additional burden on the fee and to cross the right of way on the street was but an exercise of the public right of passage. *Michigan Cent. R. Co. et al* v. *Hammond W. & E. C. Electric Ry. Co.* (1908). — Ind. App. —, 83 N. E. Rep. 650.

Whether the interurban railway is a "commercial" road or not, and, if it is, what its rights or liabilities may be is a question of considerable interest and doubt. It is briefly considered in 6 MICH. LAW REV., 84 and 174. The principal case is the latest of several recent cases in which the Indiana courts have consistently held such roads to be but an extension of the proper use of the streets and highways by urban carlines and in no way to be an additional servitude. At an early date horse cars were properly held not to be an increased burden. *Eichels* v. *Evansville,* 78 Ind. 261. Then, under facts similar to those in the principal case, the same was held as to an electric street railway, although the court seriously doubted the "soundness of the rule." *Chicago, etc. R. Co.* v. *Whiting,* 139 Ind. 297. In *Mordhurst* v. *Ft. Wayne, etc. Co.,* 163 Ind. 268, an injunction was sought to restrain the construction and operation of an interurban line. It was held that no rights of an abutting owner were invaded since such a line was not an additional servitude but, by way of dictum, that damages might be recovered for any special injury which might later follow. In *Kinsey* v. *Union Tr. Co.* (1907), — Ind. —, 81 N. E. Rep. 922, it was held, two of the court dissenting, that although such roads were "commercial" railways, yet that did not justify the holding that they were an increased burden on the fee, for which abutting owners